

§ 270.3a-1

(b) For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a-2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company's securities is a qualified purchaser.

[62 FR 17528, Apr. 9, 1997]

§ 270.3a-1 Certain prima facie investment companies.

Notwithstanding section 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(c)), an issuer will be deemed not to be an investment company under the Act; *Provided*, That:

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer's net income after taxes (for the last four fiscal quarters combined) is derived from, securities other than:

(1) Government securities;

(2) Securities issued by employees' securities companies;

(3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or (c)(1) of the Act) which are not investment companies; and

(4) Securities issued by companies:

(i) Which are controlled primarily by such issuer;

(ii) Through which such issuer engages in a business other than that of investing, reinvesting, owning, holding or trading in securities; and

(iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1)(A) or 3(a)(1)(B) of the Act (15 U.S.C. 80a-3(a)(1)(A) or 80a-3(a)(1)(B)) and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

[46 FR 6881, Jan. 22, 1981, as amended at 67 FR 43536, June 28, 2002]

17 CFR Ch. II (4-1-12 Edition)

§ 270.3a-2 Transient investment companies.

(a) For purposes of sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(A) and 80a-3(a)(1)(C)), an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The issuer's business activities; and

(2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or

(2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

[46 FR 6883, Jan. 22, 1981, as amended at 67 FR 43536, June 28, 2002]

§ 270.3a-3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(A) or 80a-3(a)(1)(C)), an